

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIL E. VOSBURGH and DEPARTMENT OF HEALTH & HUMAN
SERVICES, SOCIAL SECURITY ADMINISTRATION, Salinas, CA

*Docket No. 01-659; Submitted on the Record;
Issued November 7, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

Appellant, a 51-year-old teleservice representative, filed a notice of occupational disease and alleged that he developed an emotional condition due to factors of his federal employment. By decision dated October 4, 2000, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to substantiate a compensable factor of employment.

The Board finds this case not in posture for decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹

In this case, appellant attributed his emotional condition to his work requirement that he answer sensitive calls in English and Spanish within a specific time without interruption. He stated that the public was upset and angry.

He also stated that the employing establishment failed to inform him that his request for a special chair was denied until after four months had passed.

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Appellant alleged that his supervisor, Ester Brown, harassed him by suggesting that appellant was rude to another supervisor, by conducting unannounced service observations and by limiting appellant's request for technical assistance. He stated that she scheduled a meeting on his day off. Appellant also stated that he was required to provide medical documentation for sick leave.

Ms. Brown responded to appellant's allegations and noted some level of tension in answering the telephone calls. She stated that there were no specific time limitations on calls and no standard of how long the calls should be. Ms. Brown stated that employees were informally allowed as many short breaks as needed to recover from difficult calls and for restroom breaks. She noted that appellant's request for an ergonomic chair was initially denied, but that appellant had later received the requested chair. Ms. Brown denied appellant's allegations of harassment and noted that unannounced service observations were not a form of discipline, and that supervisors were required to discuss short telephone calls with employees. She stated that she did not feel and had not indicated that appellant was abusing his sick leave.

Appellant's allegations regarding sick leave, disciplinary actions, and requests for equipment relate to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.² Appellant has not submitted any evidence that the employing establishment acted unreasonably in these matters. He has therefore failed to substantiate these occurrences as compensable factors of employment.

Ms. Brown also denied appellant's allegation of harassment through the above-mentioned administrative or personnel matters. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.³ Appellant has submitted no evidence in support of his allegation of harassment and has not substantiated this factor of employment.

Appellant attributed his emotional condition to the work requirement that he answer telephone calls for up to eight hours a day from the public. Ms. Brown and the employing establishment concede that this is one of appellant's employment duties and that these telephone calls can be tense. However, the employing establishment specifically denied appellant's allegation that he was required to complete a specific number of calls or that the employing establishment imposed a time limit on the calls received. The employing establishment also

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Alice M. Washington*, 46 ECAB 382 (1994).

asserted that appellant was informally allowed as many short breaks as needed during the day. The Board finds that appellant has established that he was required to respond to telephone calls throughout the day and that these calls could be “tense” or unpleasant. Therefore, the Board will analyze the medical evidence to determine whether appellant has established his claim for an emotional condition.

To establish appellant’s occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In a report dated May 31, 2000, Dr. Ravin R. Sharma, a physician specializing in emergency medicine, diagnosed anxiety and depression due to work. This report is not sufficient to meet appellant’s burden of proof as Dr. Sharma did not address the specific employment factor accepted by the Board.

On August 4, 2000 Dr. Sharma attributed appellant’s emotional condition to his work duties of answering the telephone with almost no breaks, unannounced monitoring and his fear of losing his job. Dr. Dale K. Buche, a psychiatrist, completed a report on July 24, 2000 and diagnosed major depression due to job pressure. He stated that appellant’s work duties including calls with few breaks from angry beneficiaries. On August 7, 2000 Dr. Buche noted appellant’s statement that his job required handling a variety of extremely sensitive English and Spanish language interviews over the telephone within a specified period of time within a day. He noted that appellant stated the beneficiaries were frequently angry and upset. Dr. Buche also noted appellant’s allegation of harassment by Ms. Brown as well as the denial of the chair. He found that all of these factors lead to the development of appellant’s depression.

Although these reports note the accepted job factor of receiving telephone calls, Drs. Buche and Sharma also noted aspects of this employment factor not established by appellant, that he had few breaks and that the calls had to be completed within a specified time. Due to the additional aspects of the accepted employment factor addressed by appellant’s physicians, the Board finds that the Office should undertake additional development of the medical evidence by referring a statement of accepted facts, and list of specific questions to Drs. Buche and Sharma to determine whether appellant’s diagnosed condition can be attributed to the specifics of the accepted employment factor and for medical rationale in support of this

⁴ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁵ *Id.*

opinion. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The October 4, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
November 7, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member